what restraint of trade shall make a concern a "trust," provides that a "contract for any purpose relative to the business of such a trust is void." *Held*, that conceding the contract to be within the statute, the defendant was still liable for the value of the goods. *McCall* v. *Hughes*, (Miss. 1912) 59 So. 794.

In *Continental Wall Paper Co.* v. *Voight*, 212 U. S. 227, under the Sherman Act making contracts in restraint of trade "illegal" the plaintiff was not allowed to recover on an account made on the provisions of a contract in restraint of trade. The court intimated that it would not allow an action to recover the value of the goods sold to the defendant. Some states have anti-trust laws providing that the purchaser of goods from a "trust" shall not be liable for the price or payment thereof, and that he may recover back anything he pays the trust for the goods. Such statutes of course defeat any recovery by the trust. *Columbia Carriage Co.* v. *Hatch*, 19 Tex. Civ. App. 120, *Frank A. Menne Factory Co.* v. *Harback*, 85 Ark. 278. For another aspect of the situation see *Wilder Mfg. Co.* v. *Corn Products Co.* (Ga. 1912)) 75 S. E. 918, noted in 11 MICH. L. REV. 170.

THEATER—EJECTION—TORT OR CONTRACT?—Plaintiff had purchased a ticket and entered defendant's theater. Defendant ejected him. Two counts in the declaration were in tort. *Held*, that contract, not tort, was the proper action. *W. W. V. Co., Inc.* v. *Black*, (Va. 1912), 75 S. E. 82.

The weight of authority is that the ticket holder has merely a revocable license, for the wrongful discontinuance of which his only remedy is in contract. *Shubert* v. *Nixon Amusement Co.*, (N. J. 1912), 83 Atl. 369; *Taylor* v. *Cohn*, 47 Ore. 538, 84 Pac. 388; *Horney* v. *Nixon*, 213 Pa. 20, 61 Atl. 1088, 1 L. R. A. (N. S.) 1184, 110 Am. St. Rep. 520; 21 ENCY. PL. & PR. 647. The leading case on this view is *Wood* v. *Leadbitter*, 13 M. & W. 838, 14 L. J. EX. 161, 16 E. R. C. 49. But it has been held that once the ticket holder has entered, tort will lie for wrongful ejection. *Smith* v. *Leo*, 92 Hun. 242, 36 N. Y. Supp. 949; *Weber Stair Co.* v. *Fisher*, (Ky. 1909), 119 S. W. 195. See also 4 MICH. L. REV. 318.

TRIAL—INSTRUCTIONS—PREJUDICIAL INSTRUCTION NOT CURED BY CORRECT ONE.— In an action based on the fraud of defendant company while acting as agent for the plaintiffs, the court erroneously instructed the jury, in effect, that it was necessary for the plaintiffs to prove only the fact of agency, in order to make a prima facie case. In another instruction the Court correctly charged the jury that "the burden is upon plaintiffs to sustain their allegations of fraud and deceit by clear and satisfactory proof." *Held*, that the latter instruction did not cure the former one. *Alpha Realty & Rental Co.* v. *Randolph et al.* (Colo. 1912) 127 Pac. 245.

The court said, "The authorities are fairly harmonious that one instruction clearly prejudicial may not be cured by another instruction laying down the correct rule." The case is sustained by the clear weight of authority. The general rule seems to be that conflicting or contradictory instructions furnish no correct guide to the jury and the giving thereof is erroneous. 38 CYC. 1604. Some cases, apparently in conflict with this rule, declare that

"a judgment will not be reversed because of contradictory instructions where it is clear to the court that the erroneous instructions did not mislead the jury." 11 ENC. PL. & PR. 149; *Imhoff* v. *C. M. Ry. Co.* 20 Wis. 362; *U. P. Ry. Co.* v. *Milliken,* 8 Kan. 647; *Garey* v. *Sangston,* 64 Md. 31; *Washington So. Ry. Co.* v. *Lacey,* 94 Va. 460; *Robbins* v. *Roth,* 95 Ill. 464; *Maier* v. *Mass. Benefit Assoc.,* 107 Mich. 687, 65 N. W. 552. In the cases representing the general rule it seems that the courts do not attempt to inquire into the effect of the contradictory instructions on the minds of he jurors. As the court said in *Boulder* v. *Niles,* 9 Colo. 415, 12 Pac. 632, "We cannot determine by which instruction the jury was governed." To the same effect, *McDivitt* v. *Des Moines City Ry. Co.* 141 Iowa, 689; 2 THOMPSON, TRIALS (2 Ed.) § 2326.

WILLS—CREATING POWER—APPOINTMENT BEFORE DEATH OF TESTATOR.—The testator's will provided for a legacy, and stipulated that in case the legatee predeceased the testator, "then I give the same to such person or persons as she may have appointed by will to receive the same, and in default of appointment, to her next of kin." A statute provided that a power might be vested in any one capable in law of holding property. The legatee died before the testator, having made a will exercising the power. *Held* that being dead at the time of vesting i. e. at the death of the testator, the legatee was not capable of taking, and hence the power never vested. *In re Mayo's Will,* (N. Y. 1912) 136 N. Y. S. 1066.

An appointment under a contingent power before it vests is good if the contingency afterwards happens: where the contingency is an event; *Countess of Sutherland* v. *Northmore,* 1 Dicken 56; *Dalby* v. *Pullen,* 2 Bing. 144; *Johnson* v. *Touchet,* 37 L. J. Ch. N. S. 25; *Logan* v. *Bell,* 1 C. B. 872; *Wandesforde* v. *Carrick,* Ir. R. 5 Eq. 486; *Machir* v. *Funk,* 90 Va. 284, 18 S. E. 197; *Hamlin* v. *Thomas,* 24 Wkly. Notes Cas. (Pa.) 4; or where the person in whom the power is to vest is uncertain; *Thomas* v. *Jones,* 2 J. & H 475; but see *McAdam* v. *Logan,* 3 Brown Ch. 310, and *Garrett* v. *Duclos,* 128 App. Div. 508, 112 N. Y. S. 811. The contingent power must be referred to in the will purporting to execute it, in order to be well executed, *Lepley* v. *Smith,* 130. C. C. & R. 189; but general words of gift will operate as such appointment unless a contrary intention can be gained from the will itself, *Bayes* v. *Cook,* 14 Ch. D. 53. A further requisite is that the power must vest before the death of the person exercising the power. *Stillman* v. *Weedon,* 16 Sim. 26; *Curley* v. *Lynch,* 206 Mass. 289. The testator in the principal case attempted to create a power which would have been void even in the absence of statute.